

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

IN RE ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL 2327 U.S. DISTRICT JUDGE JOSEPH R. GOODWIN
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**ETHICON’S RESPONSE TO PLAINTIFFS’ MOTION TO ENFORCE COURT-
ORDERED COMMON BENEFIT ASSESSMENT AGAINST KLINE & SPECTER AND
ETHICON, INC.**

Ethicon agrees that the *Beltz* case was a “Covered Claim” and that Kline & Specter was “Participating Counsel” pursuant to PTO #62. Kline & Specter is a member of the Plaintiffs’ Steering Committee (PTO #6).

On September 10, 2019, Ethicon paid the *Beltz* judgment with interest by wire transfer to Kline & Specter without holding back the 5% Common Benefit Fund assessment. Within two days of the transfer, Ethicon recognized its error and promptly requested that Kline & Specter remit the amount directly to the Common Benefit Fund and provide proof of payment. *See* Sept. 12, 2019 Email, Ex. 1. Rather than doing so, Kline & Specter instead “held back” the 5% assessment in an escrow account. Ethicon learned that the funds had not been remitted to the Common Benefit Fund, and on October 1, 2019, Ethicon sent Kline & Specter another letter demanding that the Common Benefit assessment be remitted to the MDL Common Benefit Fund immediately. *See* Oct. 1, 2019 Letter, Ex. 2.

Despite requests from both Ethicon and the Plaintiffs’ leadership counsel, Kline & Specter continues to refuse to remit the funds. In essence, Kline & Specter has held the *Beltz*

common benefit assessment “hostage” until the resolution of its separate Motion to Set an End Date for Common Benefit Assessment filed with this Court on August 20, 2019 [Dkt. 8574]. This is in direct disregard of the Orders of this Court concerning the 5% Common Benefit assessment.

Ethicon acknowledges that under PTO #62, Ethicon and plaintiffs’ counsel are “jointly” responsible for paying into the Common Benefit Fund. However, under these circumstances—where Ethicon’s failure to withhold the assessment was inadvertent, such failure was promptly recognized and called to Kline & Specter’s attention by Ethicon, the funds have been held back by Kline & Specter and are in its possession, and Kline & Specter is refusing to remit the *Beltz* 5% assessment to the Common Benefit Fund despite repeated requests to do so—Ethicon respectfully asks that the Court declare Ethicon has fulfilled its obligation as to this *Beltz* Common Benefit Fund assessment, as the failure to remit the funds as required is now due solely to Kline & Specter’s actions.

Respectfully submitted,

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Counsel for Defendants Ethicon, Inc.,
and Johnson & Johnson

CERTIFICATE OF SERVICE

I certify that on this day, I electronically filed this document with the clerk of the court using the CM/ECF system, which will send notification of this filing to CM/ECF participants registered to receive service in this MDL.

/s/ William M. Gage
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